***THE HON'BLE SRI JUSTICE V.ESWARAIAH**

+ W.P.No.8492 of 2001

%Dated 01.10.2004

Shaik Mahamoob Basha,

S/o.S.Hussaian Mia,

R/o.D.No.11/108-4, Kagitala Penta,

Cuddapah District

.. Petitioner

Vs.

$ The A.P.S.R.T.C. Rep. by its

Chairman & Managing Director,

Musheerabad, Hyderabad.

2.The A.P.S.R.T.C. Rep. by its Regional

Manager, Cuddapah Region,

Cuddapah District

3.The A.P.S.R.T.C. Rep. by it's Depot Manager

Cuddapah Depot, Cuddapah District

.. Respondents

<GIST

>HEAD NOTE:

! Counsel for the Petitioner: Ms.B.Malleswsari

^Counsel for the Respondents: Mr.A.V.Sivaiah

? Cases referred

1. 1997(3) ALD 834 (D.B.)
2. 1999(2) ALD 96 (D.B.)
3. 1995(1) ALT 553 (D.B.)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 8492 of 2001

Between:

Shaik Mahamoob Basha, s/o. S.Hussaian Mia,
R/o. D.No.11/108-4, Kagitala Penta,
Cuddapah Dist.

..... PETITIONER

AND

1 The A.P.S.R.T.C., Rep. by it's Chairman & Managing Director, Musheerabad, Hyderabad.
2 The A.P.S.R.T.C., Rep. by it's Regional Manager, Cuddapah Region, Cuddapah Dist.
3 The A.P.S.R.T.C., Rep. by it's Depot Manager, Cuddapah Depot, Cuddapah Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent appointing the petitioner as a conductor Gr.II afresh by depositing security by its proceedings No.PA/20A(39) /2000,with out continuity of service and without back wages is wholly illegal arbitrary unjust and contrary to law and violative of Art.14,16 & 21 of the Constitution of India and violative of principles of Natural Justice and consequently direct the respondents to give continuity of service with full back wages and with all other attendant benefits.

Counsel for the Petitioner :MS.B.MALLESWARI

Counsel for the Respondents: MR.A.V.SIVAIAH

The Court made the following :

ORAL ORDER:

The petitioner has filed this writ petition questioning the order, dated 13.7.2000 of the 2nd respondent.

The 2nd respondent, passed the impugned order in the review petition, filed by the petitioner against the order of removal from service, dated 3.5.2000 confirmed by the appellate authority, vide proceedings dated 20.6.2000. The 2nd respondent in the impugned order upheld the charges proved against the petitioner as the action taken by the disciplinary authority is quite justified, but however, a lenient view has been taken by appointing him afresh as Conductor Grade-II. That order has been questioned by the petitioner on the ground that the action of the respondents in appointing him as Conductor Grade-II afresh without continuing him in the service and

without back wages and other attendant benefits as illegal and arbitrary.

The petitioner, while performing his duties as Conductor on 18.12.1999 on the vehicle bearing No.AP10Z 2801 on the route Hyderabad to Cuddapah, a surprise check was made at the alighting point i.e. Cuddapah Bus-Station on arrival from Hyderabad and he was found committing certain cash and ticket irregularities, for which, a charge memo, dated 8.12.1999 was issued to him. Based on the report of the checking officials, the petitioner was kept under suspension on 18.12.1999 and a charge sheet with the following charges was issued to him:

i. *"For having violated the Rules and Regulations of the Corporation and kept the used tickets with you either to reissue them in the subsequent service or resale them to the other persons for L.T.C. purpose which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees; (Conduct) Regulations, 1963".*

ii. *"For having collected back the following tickets from the passengers after completion of journey while you were performing service on Cuddapah – Hyderabad and back from 6.12.99 to 8.12.1999, which are supposed to be destroyed by the passengers or kept with them for LTC purpose if applicable after the journey.*

1. 100/- den. 020/546732 - 743 12 tickets Rs.1200/-

2. 70/- den. 013/555774 - 785 12 tickets Rs. 840/-

3. 60/- den. 025/274123 - 127 5 tickets Rs. 300/-

4. 20/- den. 352/916762 - 765 4 tickets Rs. 80/-

5. 10/- den. 855/851987 – 993 7 tickets Rs. 70/-

6. 7/- den. 236/494222 - 229 8 tickets Rs. 56/-

7. 6/- den. 388/333078 – 084 7 tickets Rs. 42/-

In order to either resale them to unauthorised persons for LTC purpose illegally as you admitted in the spot statement or to

reissue them in the next duties and to pocket the huge amounts illegally due to which severe loss/damage the reputation of the Corporation which constitutes misconduct under Reg.28 (x) & (xxiii) of APSRTC Employees' (Conduct) Regulations, 1963:

Pursuant to the said charge sheet, the petitioner submitted his explanation on 3.4.2000 denying the charges and pleading not guilty. As the explanation submitted by the petitioner was not convincing, the disciplinary authority ordered a domestic enquiry. The enquiry Officer, after conducting enquiry in accordance with the regulations, submitted his report on 3.4.2000 holding that the aforesaid charges were proved and the petitioner was guilty of the charges levelled against him. It is not the case of the petitioner that he was not given any reasonable opportunity or that the conducting of enquiry was not in accordance with the relevant regulations of the A.P. State Road Transport Corporation. Based on the enquiry report, the 3rd respondent (disciplinary authority) issued show cause notice, dated 20.4.2000 to show cause as to why the service of the petitioner should not be removed. Pursuant to the show cause notice, the petitioner submitted his explanation, dated 2.5.2000. The earlier reply to the enquiry proceedings, dated 15.4.2000 and the explanation filed by the petitioner, dated 2.5.2000 was considered and the 3rd respondent passed the orders removing the petitioner from service. While passing the order, all the contentions of the petitioner have been considered and it has been held that the said charges levelled against the petitioner are proved beyond all reasonable doubt; and because of the seriousness of the offence committed by the petitioner, the disciplinary authority was of the opinion that the continuance of the petitioner in the Corporation is unremunerative and the petitioner is not loyal in discharging his legitimate duties and caused serious loss to the Corporations and the Revenues and his continuance in service, will further deteriorate financial discipline and sincerity among the staff in the organization. After considering the enquiry report as regards the findings of the charges, which are proved and in view of the seriousness of the charges, the disciplinary authority imposed penalty of the removal removing the petitioner from

services as the said punishment is only fit and proper.

Aggrieved by the said order of the removal, dated 3.5.2000, the petitioner filed an appeal on 15.5.2000. The appellate authority, by his order dated 20.6.2000, considered the appeal and after perusing the entire personal records, held that the petitioner has collected all the tickets from the alighting passengers at Hyderabad which were issued to them at Cuddapah for their journey to Hyderabad with a view to reissuing the tickets to the passengers in the next service or to sell them to the Government employees for the purpose of claiming Leave Travel Concession (L.T.C.). The petitioner, in fact, accepted on the spot that the tickets were brought for the purpose of LT.C and he changed his version in his explanation to the charge sheet stating that after clearing the dues of the passengers, he got into the bus to check whether any passenger forgot their luggage and found some tickets in the bus and while he was examining them, the checking officials checked and confiscated them. The explanation was duly considered and rejected by the disciplinary authority as the same is baseless and without any foundation. While considering the contentions of the petitioner, the appellate authority noticed that in fact, once petitioner was removed from service previously for his involvement in the case of serious cash and ticket irregularities and was also issued censure 18 times and increments were deferred for 8 times during his tenure, which clearly goes to show that the petitioner is not maintaining any record. The appellate authority having agreed to the findings of the enquiry officer and the disciplinary authority held that the action taken by the disciplinary authority imposing punishment for removal of service is quite justified and there are no valid reasons to interfere with the order of the Depot Manager/C.D.P and accordingly, rejected the appeal. Against the said order, the petitioner filed a review petition on 3.7.2000 before the 2nd respondent, who entertained the petition and held that the disciplinary proceedings are in order and the contention of the petitioner is not satisfactory. It is further observed that the records would go to prove that the petitioner collected back the tickets from

the passengers and the petitioner's contention that he has not collected the said tickets from the passengers is incorrect and untenable and there is no possibility of availability of those tickets in a single bundle. The act of the petitioner will encourage certain employees to claim bonus and L.T.C with their departments concerned, which in turn badly reflects on the revenue of the Corporation. The charges levelled against the petitioner are held rightly proved and the action taken by the disciplinary authority is quite justified, but however, keeping in view the long service of twenty two years rendered by the petitioner in the Corporation, the reviewing authority has taken a lenient view with a hope that the petitioner will not give room for such type of irregularities in future and ordered for his appointment as a fresh Conductor Grade-II.

The petitioner has not challenged the findings of the enquiry officer/disciplinary authority/appellate authority and the reviewing authority, but only says that under regulation 8, the penalty imposed by the reviewing authority from that of the removal to a fresh appointment is not contemplated under regulation 8 of The Andhra Pradesh State Road Transport Corporation (Conduct of Meetings) Regulations, 1959 (for brevity "A.P.S.R.T.C. Regulations") and therefore, the said appointment cannot be treated as fresh appointment and the petitioner is entitled to the continuity of service and back wages. Regulation 8 of the A.P.S.R.T.C. Regulations deals with the penalties that will be imposed upon an employee, which reads as follows:

i. *censure;*

ii. *withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;*

iii. *fine, in the case of persons for whom such penalty is*

permissible under these Regulation, vide sub-clause (3);

iv. *withholding of increments;*

v. *recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;*

vi. *suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;*

vii. *reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;*

viii. *removal from the service of the Corporation which does not disqualify from future employment;*

ix. *dismissal from the service of the Corporation which ordinarily disqualifies from future employment.*

Under Regulation 8 (viii), an employee can be removed from service of the Corporation and such removal will not disqualify the employee from future employment.

It is stated that the 2nd respondent is also an appointing authority. In fact, the 1st respondent issued a Circular No.PD-20/82-83, dated 2.6.1982, giving certain instructions to the appellate authority that while passing orders in the appeals filed against orders of removal or dismissal from service, the appellate authorities cannot order their fresh appointment. The fresh appointment by way of disposal of an appeal against the removal or dismissal order appears basically an improper decision since the regulation does not permit such appointment. It is further observed that the appellate authority shall keep in view the factors as regards the gravity of charges which are proved and which reflect on the integrity of the employee.

The learned counsel appearing for the petitioner has submitted that as per the said Circular, there is no power to order a fresh appointment and therefore, the appointment of the petitioner shall be treated as continuance of service and he is entitled to the back wages. A perusal of the said Circular goes to show that in fact the petitioner is not even entitled to fresh appointment as the charges proved against him are grave and serious in nature and he is not entitled to the services of the Corporation at all. But however, the reviewing authority has taken a very lenient view having observed that as a matter of fact the petitioner was removed once previously from service for his involvement in the case of serious cash and ticket irregularities and he was issued censure 18 times and increments were deferred for 8 times during his tenure and therefore, the petitioner is having very bad record.

Even otherwise, I am of the opinion that as per the regulation 8 (viii), the appointing authority has got power to consider for a fresh appointment, as the removal of a person from service does not disqualify him for future employment. Therefore, I am of the view that the said order of the reviewing authority for fresh appointment cannot be said to be contrary to regulation 8 (viii).

The learned counsel appearing for the petitioner has relied on the judgments of this Court in the case of **SHAIK QURSHEED Vs. MANAGING DIRECTOR, A.P.S.R.T.C.** and in the case of **THE MANAGING DIRECTOR, A.P.S.R.T.C. AND OTHERS Vs. N.SHANKARAIAH.** Both the aforesaid cases relate to unauthorised absence of an employee from his duties for a short period and for such unauthorized absence, the disciplinary authority imposed gross disproportionate punishment of removal from service in both the cases. On appeal, the appellate authorities have taken a lenient view and ordered fresh appointment. Insofar as *Shaik Qursheed's* case is concerned, the Division Bench of this Court remitted the matter to the appellate authority to reconsider the request whether the punishment imposed by the appellate authority is disproportionate to the gravity of the charges. In case of the *Managing Director, A.P.S.R.T.C.,* this

Court, while considering the punishment imposed by the appellate authority was of the view that the punishment imposed was shockingly disproportionate to the gravity of the charges proved against the employee and instead of remanding the matter to the disciplinary authority for fresh consideration, their Lordships have considered it just and proper to direct an appropriate punishment and accordingly, having regard to the nature of the charges, the back wages were denied for the period between the date of removal and the date of his reinstatement. Both the aforesaid cases, have no application to the facts of this case as the charges framed against the driver in the aforesaid case is only with regard to the unauthorised absence for a short period of one month, whereas, in the instant case, charges levelled against the petitioner are grave in nature and are proved.

In fact, on the similar facts and circumstances, the Division Bench of this Court, in the case of **P.HABEEB SAHEB Vs. A.P.S.R.T.C.** while considering similar order of the appellate authority, who ordered fresh appointment, held as follows:

> *"……. He categorically stated that the action of the Depot Manager removing the appellant from service was based on well established charges. He further clarified that the order of removal does not call for interference. Thus, he has confirmed the order of removal. Therefore, it cannot be said that the order of removal passed by the Depot Manager and confirmed by the appellate authority was modified by the Regional Manager. However, while confirming the order of removal, what he did was this. He directed that the employee may be appointed afresh as Conductor. In pursuance of that order, the employee joined service as a fresh candidate on 15th February, 1981.*
>
> *The order passed by the Regional Manager consists of two parts. The first part relates to the confirmation of the order of removal. The second part relates to a direction for appointment as a fresh candidate. The order of removal is no bar for appointment as a fresh candidate. The Regional Manager has clearly stated that on compassionate grounds, a direction has been issued to appoint the employee as a fresh candidate. So long as the order of punishment stands, it cannot be said that the reviewing authority had either modified the order of*

punishment or in any other way interfered with it. So long as the order of removal stands, question of claiming the benefit of his past service because of his appointment as a fresh candidate will not arise. In those circumstances, the decisions relied on by the learned counsel have no application to the facts of this case. For the aforementioned reasons, we do not see any reason to interfere with the order passed by the learned single Judge"……

The aforesaid well-considered principle of the Division Bench squarely applies to the facts of the present case.

For the aforementioned reasons, I do not see any merits in this writ petition and the petitioner is not entitled to any relief of continuous service or back wages and the writ petition is accordingly dismissed. However, there shall be no order as to costs.

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(V.ESWARAIAH, J.)

1st October, 2004.

Bcj

To

One fair copy to the Honourable Sri Justice V.Eswaraiah (for his Lordships kind perusal)

1 The Chairman & Managing Director, A.P.S.R.T.C.,
Musheerabad, Hyderabad.
2 The Regional Manager, A.P.S.R.T.C.,
Cuddapah Region, Cuddapah Dist.
3 The Deport Manager, A.P.S.R.T.C.,
Cuddapah Depot, Cuddapah Dist.

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5 The Under Secretary, Union of India, Ministry of Law, Justice and Company affairs, New Delhi.

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